

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROLINE A. EASTBURN
Claimant

VS.

SUPERIOR INDUSTRIES INTERNATIONAL
Respondent
Self-Insured

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Docket No. 1,000,203

ORDER

Claimant requests review of the April 14, 2004 preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

At the preliminary hearing held April 13, 2004, claimant requested temporary total disability benefits commencing March 4, 2004 and payment of medical mileage. However, respondent argued that claimant was not temporarily totally disabled, but capable of working with restrictions respondent could have accommodated, and did accommodate in the past until the claimant was terminated for cause. Respondent did not contest liability for medical mileage.

The issue raised on appeal by claimant is limited to whether the ALJ erred in not awarding temporary total disability compensation.

At the preliminary hearing, respondent's argument was that claimant is ineligible for temporary total disability benefits because of her termination for cause and absent that termination respondent could have accommodated her restrictions.

The ALJ denied claimant's request for temporary total disability compensation but did award medical mileage, noting that:

Dr. Ketchum indicated that the claimant is capable of working with one arm while seated. The claimant admitted that the respondent did accommodate this restriction for a year prior to her termination. The parties stipulated that a respondent's representative would testify that the accommodation could still be made available at the respondent's workplace.¹

The ALJ noted that claimant's status as a full-time student, achieved following her employment for the respondent, raised a question about whether claimant's unavailability for employment was based on personal reasons.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record compiled to date, the Board makes the following findings of fact and conclusions of law:

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.² This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.³

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

¹ Order at 2 (April 14, 2004).

² K.S.A. 44-551.

³ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁴

The ALJ has the jurisdiction and authority to deny temporary total disability benefits at a preliminary hearing. Therefore, Judge Hursh did not exceed his jurisdiction. Whether respondent could have accommodated claimant's restrictions and whether that fact coupled with the reason for claimant's termination would prevent claimant from receiving temporary total disability benefits are not issues that are reviewable from a preliminary hearing order.

Accordingly, the Board concludes that it does not have jurisdiction at this juncture of the proceedings to review whether the ALJ erred in denying claimant temporary total disability compensation.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁵

WHEREFORE, claimant's appeal of the April 14, 2004 Order entered by Administrative Law Judge Kenneth J. Hursh is dismissed.

IT IS SO ORDERED.

Dated this ____ day of June 2004.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Troy A. Unruh, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ *Allen v. Craig*, 1 Kan. App. 2d 301, 303 and 304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁵ K.S.A. 44-534a(a)(2) (Furse 2000).